



JAMES A. NOYES, Director

# COUNTY OF LOS ANGELES

## DEPARTMENT OF PUBLIC WORKS

900 SOUTH FREMONT AVENUE  
ALHAMBRA, CALIFORNIA 91803-1331

Telephone: (626) 458-5100  
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:  
P.O. BOX 1460  
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE  
REFER TO FILE:

**WM-6**

March 27, 2003

TO: Each Supervisor

FROM: James A. Noyes  
Director of Public Works

Lloyd W. Pellman  
County Counsel

### **WATERSHED CONSERVATION AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT**

On March 18, 2003, Public Works requested your Board to approve the Water Conservation Authority Joint Exercise of Powers Agreement between the San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy (RMC) and the Los Angeles County Flood Control District. Supervisor Don Knabe requested a continuance for two weeks to allow Public Works and County Counsel to prepare a written response discussing the following issues. Public Works and County Counsel have worked with Belinda Faustinos, Executive Officer of the RMC, to prepare the following responses:

1. Memorandum of Understanding (MOU) vs. Joint Powers Agreement (JPA)

The legal form of the proposed collaboration between the RMC and the District could be either an MOU or a JPA. However, Public Works and the RMC believe the benefits of using a JPA are greater than those received from an MOU.

The JPA would create a separate legal entity, a Joint Powers Authority, that could apply for funding in its own name. The Authority would be a more effective applicant than either party individually because it could provide, with certainty, partnering, matching funds and collaborative approaches, which are elements generally encouraged by granting agencies. An MOU, which would not create a separate entity, would not have these benefits.

Further, Public Works is interested in developing multiobjective projects, which would benefit the community and environment by more effectively managing watershed resources. Developing such projects requires a cross-jurisdictional approach.

Implementing such a cross-jurisdictional approach through a JPA rather than an MOU would allow for both greater flexibility and expediency in responding to opportunities for such projects as they arise.

2. Competition for funds

The types of potential projects which the Authority could pursue would be limited to those that met the specific purposes of the JPA, and it is the intent of both the RMC and Public Works that the Authority consider only those potential projects that would be consistent with the objectives of the RMC's Open Space Plan and the County's Los Angeles and San Gabriel River Master Plans.

Accordingly, the number and types of grants for which the Authority could apply would be more limited than those for which a city could apply. Further, it is the intent of both the RMC and Public Works that the Authority pursue projects which are located in unincorporated areas.

3. Applicability of Local Regulatory and Governing Controls

In accordance with Section 53091(a) of the Government Code, the Authority would generally be subject to the building and zoning codes of any city in which it were to propose a project. However, a limited exception could exist for projects involving facilities for the production, generation, storage, treatment, or transmission of water or wastewater.

Section 53091(d) of the Government Code provides that local building ordinances are not applicable to the location or construction of facilities to be used directly and immediately for the production, generation, storage, treatment, or transmission of water or wastewater. Section 53091(e) provides that local zoning ordinances are not applicable to the location or construction of facilities to be used directly and immediately for the production, generation, storage, treatment, or transmission of water.

Additionally, pursuant to Section 53096(a) of the Government Code, a city's zoning ordinance would not apply to any facilities related to the storage or transmission of water, provided that the governing body of the JPA adopted a resolution, by 4/5 vote, determining that there is no feasible alternative to the proposed project.

It is not the intent of either the RMC or Public Works that the Authority be authorized to implement a project, which did not conform to the building or zoning ordinances of the local jurisdiction in which the project was located. Therefore, the JPA has been revised to expressly require the Authority to comply with all local building and zoning ordinances.

With respect to eminent domain, the JPA would not have condemnation powers. A joint powers authority is only authorized to exercise powers that are common to its member agencies. Although the District has the power of eminent domain, the RMC does not (See Section 32613 of the Public Resources Code). Accordingly, since eminent domain is not a power common to both parties, the proposed joint powers authority would not have the authority to condemn property.

If you have any questions, please contact Don Wolfe, Assistant Director, at (626) 458-4014 or Mark Yanai, Principal Deputy County Counsel, at (213) 893-2279.

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cc: Chief Administrative Office  
County Counsel (Yanai)  
Department of Regional Planning  
Executive Office  
Rivers and Mountains Conservancy (Faustinos)

# **WATERSHED CONSERVATION AUTHORITY JOINT EXERCISE OF POWERS AGREEMENT**

## **PREAMBLE**

*Whereas*, The San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy was established in 1999 to acquire and manage public lands within the Lower Los Angeles River and San Gabriel River watersheds, and to provide open space, low impact recreational and educational uses, water conservation, watershed improvement, wildlife and habitat restoration and protection; and

*Whereas*, The Los Angeles County Flood Control District is a flood control district, the objects and purposes of which are to provide for the control and conservation of the flood, storm and other waste waters of said district, to conserve such waters for beneficial and useful purposes and to protect from damage from such flood or storm waters, the harbors, waterways, public highways, and property in said district.

*Whereas*, The Los Angeles County Flood Control District is further authorized to provide, by agreement with other public agencies or private persons or entities, for the recreational use of the lands, facilities, and works of such district which shall not interfere, or be inconsistent, with the primary use and purpose of such lands, facilities, and works for flood control and water conservation, and to preserve, enhance, and add recreational features to its properties for the protection, preservation, and use of the scenic beauty and natural environment; Now

*Therefore*, Pursuant to the Joint Exercise of Powers Act (Government Code § 6500 *et seq.*) the San Gabriel and Lower Los Angeles Rivers and Mountains RMC (hereinafter RMC) and the Los Angeles County Flood Control District (hereinafter District) agree as follows:

## **1. PURPOSE**

1.0. The purpose of this agreement is to provide for a comprehensive program to expand and improve the open space and recreational opportunities for the conservation, restoration, and environmental enhancement of the San Gabriel and Lower Los Angeles Rivers Watershed area consistent with the goals of flood protection, water supply, groundwater recharge and water conservation.

1.1. As a further necessary and integral purpose of this agreement, the acquisition and protection of lands for watershed protection, conservation, natural open space, and recreational purposes is contemplated using existing resources and additional resources that may be available by virtue of the joint efforts of the parties to this agreement.

1.2. Acquisition may be by way of gift, devise, purchase, or exchange and shall extend to any interest in real or personal property necessary to carry out the purposes of this agreement.

## 2. COMMON POWERS

2.0. The parties hereto agree to exercise their common powers to the maximum extent thereof for the purposes of implementing this agreement, including, but not limited to, all the powers specified in Joint Exercise of Powers Act, codified in Chapter 5 of Division 7 of Title 1 of the Government Code (commencing with § 6500), as may be amended during the term of this Agreement.

2.1. Except as otherwise provided in paragraph 2.3, below, such powers are subject to the restrictions upon the manner of exercising the powers as imposed upon the District as provided in, and for the purposes of, Government Code § 6509.

2.2 The AUTHORITY shall have no power to acquire property by eminent domain or to raise revenues and/or incur debt through taxation, assessment and/or levy of any kind. Notwithstanding the foregoing prohibition, a party to this agreement may form a benefit district or incur debt, within its individual boundaries and utilizing its statutory authority, in furtherance of the purposes of the AUTHORITY.

2.3 The Authority shall be subject to all laws (including building ordinances and zoning ordinances), regulations and general and specific plans of any city or county in which the Authority proposes to take action.

## 3. JURISDICTION

3.0. For purposes of this agreement, the San Gabriel and Lower Los Angeles Rivers Watershed Area shall include such areas as may be needed to provide additional open space and recreational amenities that will further the purposes of this agreement within the following territory:

- (a) The hydrologic basin or watershed that coincides with the upper San Gabriel River watershed, including the Upper Rio Hondo tributary, but not including any land area within the Santa Monica Mountains Conservancy as described in Chapter 2 (commencing with Section 33100) and Chapter 3 (commencing with Section 33200) of Division 23. The hydrologic basin or watershed is bounded by the San Gabriel Mountains to the north, the San Jose Hills to the east, the Puente Hills to the south, and by a series of hills and the

Raymond Fault to the west.

- (b) The hydrologic basin or watershed that coincides with the lower San Gabriel River watershed.
- (c) The San Gabriel Mountains, including the Foothills Mountains Conservancy and the Puente Hills and San Jose Hills area, except any land area within the Santa Monica Mountains Conservancy as described in Chapter 2 (commencing with Section 33100) and Chapter 3 (commencing with Section 33200) of Division 23.
- (d) The hydrologic basin or watershed that coincides with the lower Los Angeles River south of the northernmost boundary of the City of Vernon, as of June 1, 1999, except any land area within the Santa Monica Mountains Conservancy, as described in Chapter 2 (commencing with Section 33100) and Chapter 3 (commencing with Section 33200) of Division 23.
- (e) The AUTHORITY, upon approval of all the parties to this Agreement, may acquire property, or engage in activities outside the San Gabriel and Lower Los Angeles Rivers Watershed area as defined in section 3.0 of this Agreement, to the extent necessary to carry out the purposes set forth in Section One of this Agreement.

#### 4. SEPARATE ENTITY

4.0. The "Watershed Conservation Authority" (hereinafter "AUTHORITY") is hereby established as a separate public entity within the meaning, and for the purposes of, the Joint Exercise of Powers Act (Government Code § 6500 *et seq.*).

#### 5. GOVERNING BOARD

5.0. The Authority shall be governed by a "board constituted pursuant to the agreement" within the meaning of Government Code § 6506.

5.1. The Governing Board of the AUTHORITY shall consist of eight (8) voting members and one (1) non-voting member as follows:

- (a) Four voting members appointed by the Governing Board of the RMC, none of whom shall be a member appointed by the Los Angeles County Board of Supervisors.
- (b) The four voting members of the Board of Supervisors of the Los Angeles

County Flood Control District, or their designees, who represent the areas or portions thereof contained within the territory for the RMC.

- (c) The Director of the Los Angeles County Department of Public Works shall serve as a non-voting, ex officio member of the Governing Board.

## 6. MEETINGS

6.0. All meetings of the Governing Board shall be called, held, and conducted in accordance with the provisions of the Ralph M. Brown Act and with such further rules of the Governing Board as are not inconsistent therewith.

6.1. The Authority shall keep, or cause to be kept, the minutes of the Governing Board's meetings, and shall as soon as possible after each meeting, forward a copy of the minutes to each member of the Governing Board and to the governing body of each of the participating entities to this agreement.

## 7. QUORUM AND PROCEDURE

7.0. A majority of the Governing Board shall constitute a quorum for the transaction of business. The affirmative vote of a majority of those members present and voting shall constitute an action of the Governing Board.

Where applicable, *Robert's Rules of Order, Newly Revised*, shall govern the procedures of the Governing Board, except when inconsistent with the Ralph M. Brown Act.

## 8. COMPENSATION

8.0. Members of the Governing Board shall serve without compensation except that a reasonable allowance or reimbursement for attendance at meetings of the Governing Board, as determined by the Governing Board, may be paid to the public members in an amount not to exceed \$50 to the extent compatible with Government Code §1126, Public Contract Code §§ 10410 and 10411, and any other applicable statute.

## 9. ADMINISTRATION

9.0. The AUTHORITY shall be administered in accordance with the policies and directives of the Governing Board. It shall have an Executive Officer who shall perform the functions stated in Government Code § 6505.1.

9.1. The Executive Officer of the RMC shall serve *ex officio*, without compensation, as Executive Officer of the AUTHORITY

9.2. The AUTHORITY may use counsel from its member agencies, or it may retain independent counsel.



9.3. To implement this Agreement the parties hereto may loan employees to the AUTHORITY.

## 10. FISCAL CONTROLS

10.0. The fiscal year of the AUTHORITY shall be the fiscal year of the DISTRICT.

10.1. To the extent funds are legally available therefore; the DISTRICT and the RMC are hereby authorized to make payments and contributions of public funds, as provided in Section 6504 of the Government Code.

10.2. The AUTHORITY shall be strictly accountable for all funds, receipts, and disbursements. The AUTHORITY shall adopt an annual budget, in a form approved by the DISTRICT and the RMC, which budget shall be submitted to the Board of Supervisors of the DISTRICT and the RMC for approval. Public funds may not be disbursed by the AUTHORITY except pursuant to a budget which has been adopted by the AUTHORITY and approved by the Board of Supervisors of the DISTRICT and the Governing Board of the RMC, and all receipts and disbursements shall be in strict conformance with the adopted and approved budget.

10.3. The treasurer of the DISTRICT shall act as the treasurer of the AUTHORITY and shall be the depository and have custody of all money of the AUTHORITY from whatever source. The AUTHORITY shall reimburse the DISTRICT for costs incurred pursuant to this section, subject to prior approval of the Governing Board. The treasurer so designated shall:

- (a) Receive all money of the AUTHORITY and place it in the treasury of the DISTRICT, or other appropriate account, to the credit of the AUTHORITY.
- (b) Be responsible on his official bond for the safekeeping and disbursement of all AUTHORITY money so held by him or her.
- (c) Pay, when due, out of money of the AUTHORITY so held, all sums due on outstanding obligations of the AUTHORITY. Said sums shall be paid only by warrants of the public officer performing the functions of auditor or controller of this AUTHORITY.
- (d) Verify and report in writing on a quarterly basis to the AUTHORITY and to the parties to this agreement, the amount of receipts since the last report, and the amount paid out since the last report.

10.4. The Auditor Controller of the DISTRICT shall perform the functions of auditor or controller of the Authority. The Auditor Controller shall either make or contract with a certified public accountant to make, annual audit of the accounts and records of the AUTHORITY. In each case the minimum requirements of the audit shall be those prescribed by the State

Controller for special districts under Section 26909 of the Government Code, and shall conform to generally accepted auditing standards. Where an audit of an account and records is made by a certified public accountant, a report thereof shall be filed as a public record with each of the parties to this agreement. Such report shall be filed within six months of the end of the fiscal year under examination. Any costs of the audit, including contracts with or employment of a certified public accountant shall be borne by the AUTHORITY and charged against any unencumbered funds of the AUTHORITY. The AUTHORITY shall reimburse the DISTRICT for costs incurred in connection with the performance of any other functions by the Auditor Controller, pursuant to this section, subject to prior approval of the Governing Board

10.5. The AUTHORITY shall have the power to invest any money in the treasury of the AUTHORITY that is not required for the immediate necessities of the AUTHORITY, as the AUTHORITY determines advisable, in the same manner and upon the same conditions as local agencies pursuant to Section 53601 of the Government Code.

## 11. BONDS

11.0. Each member of the Governing Board, the Executive Officer, and treasurer shall file an official bond with the AUTHORITY. When deemed appropriate by the AUTHORITY, a master bond may be utilized as referred to in Government Code Section 1481, and the bond shall also comply with the requirements of Title 1, Division 4, Chapter 3 of the Government Code, with those sections being deemed applicable to the AUTHORITY to the extent the DISTRICT deems appropriate. The bond shall be in the amount of not less than \$50,000. The premium shall be paid by the AUTHORITY.

## 12. LIABILITY

12.0. The tort liability of the AUTHORITY and of all members of the Governing Board, and the executive officer and employees of the parties to this agreement, who may be loaned to the AUTHORITY, shall be controlled by the provisions of Division 3.6 of the Government Code. The provisions of Division 3.6 of the Government Code relating to indemnification of public employees and the defense of actions arising out of any act or omission occurring in the scope of their employment shall apply to all members of the Governing Board, officers, and employees with respect to the AUTHORITY.

12.1 Pursuant to Section 6508.1 of the Government Code, the parties agree that the RMC shall assume all liabilities arising out of or with respect to:

- (a) Any and all actions taken by AUTHORITY personnel acting on RMC property pursuant to a reciprocal management agreement between the RMC and the AUTHORITY; and

- (b) Any and all property owned by the AUTHORITY which is subject to a reciprocal management agreement between the RMC and the AUTHORITY.

12.2 Except as to those liabilities specifically provided for in Section 13.1, the parties to this Agreement specify that the debts, liabilities, and obligations of the AUTHORITY shall not be the debts, liabilities, and obligations of either of the parties to this Agreement.

12.3 In addition, the AUTHORITY may insure itself and the parties, and the officers and employees of the parties, in a manner, form and amount appropriate and acceptable to the DISTRICT and the RMC.

### 13. DISPOSITION OF PROPERTY AND FUNDS

13.0. Upon termination of this Agreement, the AUTHORITY forthwith shall wind up its affairs, including discharging all of its outstanding legal obligations. Personal property and funds remaining in the AUTHORITY shall be returned to the party from which the funds or personal property were obtained, except as mutually agreed by the parties. All real property, if any, owned by the AUTHORITY shall be conveyed as the AUTHORITY shall determine, and if no determination is made, then such property shall be deemed to be conveyed to the DISTRICT and the RMC, in equal interests, as tenants in common.

### 14. WITHDRAWAL OF PARTIES AND TERMINATION OF AGREEMENT

14.0 Any party may withdraw as a party to this Agreement provided that: (1) at the time of withdrawal, that party has either discharged, or arranged to the satisfaction of the other party to this Agreement for the discharge of, any pending legal or financial obligations it has assumed under or pursuant to this Agreement and (2) it provides written notice of its intent to withdraw to the Executive Officer not less than three months prior to the effective date of its withdrawal.

14.1. Upon the effective date of the withdrawal of either party from this Agreement, this Agreement shall be deemed terminated.

### 15. NON LIABILITY OF PARTIES

15.0. Except as provided in Section 12 of this Agreement, neither the AUTHORITY nor the Governing Board shall have the power or authority to bind the parties to this agreement, or any of them to any debt, liability, contract, or obligation, or to employ any person on behalf of the parties, or any of them,

15.1. No action or omission of the parties or any of them shall be attributable to any other parties to this agreement except as expressly provided in Section 12 of this Agreement.

15.2. The AUTHORITY may maintain such public liability and other insurance as in its discretion is deemed appropriate and to the extent the cost of premiums thereof are provided for in the approved budget of the AUTHORITY.

## 16. CONTRIBUTION OF THE PARTIES

16.0. Contribution of RMC. Exclusive of grants which the RMC may award to the AUTHORITY or the DISTRICT from time to time, the RMC contribution to the AUTHORITY shall not exceed \$35,000 in any fiscal year. Contribution is here defined to include monetary contributions, if any, and the reasonable value of the services of any employees of the RMC loaned by it to the AUTHORITY, if any.

16.1 Contribution of DISTRICT. Exclusive of grants which the DISTRICT may award to the AUTHORITY from time to time, the DISTRICT contribution to the AUTHORITY shall not exceed \$25,000 in any fiscal year. Contribution is here defined to include monetary contributions, if any, and the reasonable value of the services of any employees of the DISTRICT loaned by it to the AUTHORITY, if any.

16.2 Sections 16.0 and 16.1 shall not affect the mutual exchange of services between parties to this agreement and the AUTHORITY without payment of any consideration other than such services. Such mutual exchange of services is hereby authorized to the extent permitted by Section 6506 of the Government Code.

16.3 Each party to this agreement shall contribute \$500 per annum to cover costs of mailing notices and other required expenditures.

16.4 The RMC has delegated authority, under certain circumstances, to enter into contracts not exceeding \$35,000, without the approval from the California Department of General Services. If this contract approval delegation amount is adjusted pursuant to the State Administrative Manual or State Contracting Manual, or similar directive, the limitation on the total value of the contributions of the RMC, as described in Section 16.0, shall be automatically adjusted such that the value of such contributions shall remain within the contract delegation amount.

## 17. NON\_DISCRIMINATION

17.0. The provisions of the State of California Non-Discrimination Clause (Form 17B) are by this reference incorporated herein.

## 18. APPLICATION OF POWERS

18.0. Insofar as powers common to the DISTRICT included in this agreement, and not to the RMC, are exercised by the AUTHORITY, the governing Board and officers thereof shall

exercise such powers as the administering agency of this agreement pursuant to Government code Section 6506, notwithstanding the fact that they may be appointed by, or representative of, the RMC.

## 19. AMENDMENT TO THE AGREEMENT

19.0. The provisions of this agreement shall be amended solely upon the adoption of a resolution to amend by each party to the agreement.

## 20. TERM

20.0 This Agreement shall continue in full force and effect from year to year until terminated.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed on the \_\_\_\_ day of \_\_\_\_\_, 2003 by their duly authorized representatives.

San Gabriel and Lower Los Angeles  
Rivers and Mountains Conservancy

By: \_\_\_\_\_  
Chairperson

LOS ANGELES COUNTY FLOOD CONTROL DISTRICT

By: \_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

ATTEST:  
Violet Varona-Lukens  
Executive Officer-Clerk of  
The Board of Supervisors

APPROVED AS TO FORM:  
LLOYD W. PELLMAN  
County Counsel

By: \_\_\_\_\_

By: \_\_\_\_\_